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ILLINOIS COMMERCE COMMISSION)
On Its Own Motion)
Revision of 83 Ill. Adm. Code 732) 02-0426

**Prehearing Brief of the
Illinois Telecommunications Association**

Pursuant to the direction of the Administrative Law Judge ("ALJ") at the July 18, 2002 prehearing conference, the Illinois Telecommunications Association, Inc. ("ITA") hereby submits its responses to the following questions:

1. Is the Commission preempted from having a rule which grants carriers an exemption from that rule in the event of strikes and/or work stoppages?

The State of Illinois is preempted by federal labor laws from interfering with the collective bargaining process between employers and employees. If the customer credit statute (new Section 13-712 of the Public Utilities Act) interferes with the collective bargaining process, then the statute itself is preempted, not just the Commission's rule implementing the statute. In this event, the entire customer credit statute will be lost. If, on the other hand, the customer credit statute does not interfere with the collective bargaining process, then neither the statute nor a Commission rule implementing the statute are preempted.

The Commission heard evidence and legal arguments on this exact issue on rehearing in Docket 01-0485 and concluded as follows:

"As may be expected with questions of federal preemption, resolution of this issue was not easy. The Commission concludes, however, that it is not barred by the Supremacy Clause of the U. S. Constitution from granting LECs a waiver from the obligations of Part 732 when LECs are confronted with a strike or work stoppage.

The NLRA was enacted to protect the collective bargaining process. Employers and employees must be free to bargain without pressure from governmental entities. The Commission finds that paying customer credits would unduly burden LECs that are faced with strikes. LECs that

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have lost their work force as the result of a strike should not and can not be expected to meet all of their obligations under Part 732. If required to pay customers credits during a strike or work stoppage, LECs may feel pressured to succumb to union demands and settle the strike to avoid paying credits. Because of the pressure to settle that LECs may feel, the Commission finds that Part 732 would interfere with the collective bargaining process and thus violate the Supremacy Clause. Accordingly, the burden which LECs must endure when faced with a strike or work stoppage, NLRA sanctioned economic weapons, should not be aggravated but instead should be ameliorated by granting such LECs a temporary waiver from the otherwise generally applicable obligations of Part 732. The duration of the waiver should be 90 calendar days, beginning on the day that a strike or work stoppage begins. The Commission finds that an exemption of this duration sufficiently balances the interests of LECs and customers." (Interim Order on Rehearing, April 30, 2002, pp. 28-29).

This conclusion by the Commission became final and non-appealable when no party filed an appeal by July 26, 2002. If not for the Commission's action in initiating this new docket to reconsider the matter for a second time, the issue would be finally resolved.

The Commission's final order in Docket 01-0485 dated June 19, 2002, noted an objection from the Joint Committee on Administrative Rules, but stated that "insufficient evidence exists to support a different exemption period." (pp. 1-2). The suggestion by the Joint Committee on Administrative Rules is that the 90 day exemption for strikes and work stoppages in the Commission's definition of emergency situation interferes with the collective bargaining process because it is State action that weakens the potential impact of a strike by telecommunications employees. What the Joint Committee failed to recognize is that the customer credit statute is State action that strengthened the potential impact of strikes by telecommunications employees. The customer credit statute and the rule implementing it must be viewed together in determining whether the collective bargaining process has been interfered with. The 90 day exemption, which was based on evidence of record in Docket 01-0485, does not weaken the economic weapon that available to telecommunications employees prior to the passage of the customer credit statute, but rather it has the effect of strengthening that weapon only after a reasonable time.

The Commission's adoption of the 90 day exemption for strikes and work stoppages based on the evidence of record in Docket 01-0485 and its refusal to modify the proposed rule in response to the Joint Committee's objection should be reaffirmed.

2. Does Section 13-712 of the Act preclude the Commission from having a rule which grants carriers an exemption from that rule in the event of strikes and/or work stoppages?

Section 13-712 of the Act does not define the term "emergency situation," nor does it, in and of itself, contain any restriction on the Commission's authority to interpret the language of a statute that it is called upon to implement and administer in the process of adopting the rules required by the statute.

WHEREFORE, the Commission should confirm it's previous conclusions regarding this issue in the final order in Docket 01-0485 dated June 19, 2002, and dismiss this proceeding, or in the alternative the Commission should proceed to evidentiary hearings so that the issue may be finally resolved.

Respectfully submitted,

Illinois Telecommunications Association, Inc.

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CERTIFICATE OF SERVICE

02-0426

The undersigned, TROY A. FODOR, hereby certifies that on the 19th day of August, 2002, he served a copy of the foregoing instrument by personally delivering a copy thereof and/or mailing a copy thereof by electronic mail and/or United States Mail, postage prepaid, at Springfield, Illinois, to the individuals named on the attached Service List in envelopes plainly addressed to each of them.

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